

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RECEIVED

2006 MAY 15 P 4:05

| | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------------|
| AUTO-OWNERS INSURANCE COMPANY, a mutual insurance company incorporated in the State of Michigan, |) | DEBRA P. HACKETT, CLK U.S. DISTRICT COURT MIDDLE DISTRICT ALA |
| Plaintiff, |) | |
| v. |) | CIVIL ACTION NO.: 1:05-cv-1024-MHT |
| SUNSHINE CAMPING CENTER, INC., a corporation; UNION PLANTERS BANK, N.A., and/or UNION PLANTERS BANK, N.A. n/k/a REGIONS BANK, N.A., |) | |
| Defendants. |) | |

MOTION OF PLAINTIFF, AUTO-OWNERS INSURANCE COMPANY FOR LEAVE TO AMEND PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND JUDGMENT

COMES NOW Plaintiff, Auto-Owners Insurance Company (Auto-Owners), and moves this Honorable Court for leave to amend to file Plaintiff's first amended complaint for declaratory relief and judgment and for grounds shows unto the Court as follows, to wit:

1. That this action is a declaratory judgment action regarding insurance coverage issues as to claims of Union Planters Bank, N.A., in the underlying action styled Union Planters Bank, N.A. v. Sunshine Camping Center, et al., Civil Action No.: CV-04-251 pending in the Circuit Court of Dale County, Alabama.
2. That counsel for Plaintiff has learned that Defendant Union Planters Bank, N.A., and/or Union Planters Bank, N.A., n/k/a Regions Bank, N.A. has also filed a cross-claim and third-party claim in the action styled McAllister v. Sunshine Camping Center, Inc.

et al, pending in the Circuit Court of Dale County, Alabama, in Civil Action No.: CV-04-296.

3. That a review of the claims in the complaint in the underlying action CV-04-251-M and in the cross-claim and third-party claim in CV-04-296-M demonstrate that the coverage issues regarding said claims should be adjudicated in one action. Review of the allegations of the complaint in the underlying action CV-04-251-M including, *inter alia*, paragraph 11, and review of the allegations in the cross-claim and third-party claim in CV-04-296-M including, *inter alia*, paragraph 2, demonstrate that the coverage issues in the two actions are identical with regard to the claims of Union Planters against Sunshine Camping Center as to McAllister transaction. A copy of the underlying complaint in CV-04-251-M and the underlying cross-claim and third-party claim in CV-04-296-M are attached to Plaintiff's amended complaint (Exhibit "A" hereto) as Exhibits "2" and "6".

4. That the insurance coverage issues which are the subject of the previously filed complaint for declaratory relief and judgment are the same as those presented in the first amended complaint for declaratory relief and judgment.

5. That in the interest of justice and judicial economy, leave should be granted to Plaintiff so that the coverage issues presented by both actions may be adjudicated in this action.

6. That Plaintiff's amendment does not add additional parties and is not expected to delay the trial of this action.

7. That Defendants will not be prejudiced by the granting of this motion. A copy of Plaintiff's first amended complaint for declaratory relief and judgment is attached hereto as Exhibit "A".

8. That the deadline set by this Honorable Court in this action for filing of

amended pleadings has not passed, therefore, leave of Plaintiff to amend should be granted pursuant to Rule 15(a), *FRCP*.

WHEREFORE, Plaintiff, Auto-Owners Insurance Company, moves this Honorable Court for leave to amend Plaintiff's complaint and to file Plaintiff's first amended complaint for declaratory relief and judgment.

Dated this the 15th day of May, 2006.


ROGER S. MORROW, MOR032


JOEL H. PEARSON, PEA019
Attorneys for Plaintiff, Auto-owners
Insurance Company

OF COUNSEL:

MORROW, ROMINE & PEARSON, P.C.
122 South Hull Street
P.O. Box 4804
Montgomery, Alabama 36103-4804
Telephone: (334) 262-7707
Facsimile: (334) 262-7742

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following by placing a copy of same in the United States mail, first class postage prepaid on this the 15th day of May, 2006.

Hon. Robert H. Brogden
P.O. Drawer 1007
Ozark, Alabama 36361-1007

Honorable John G. Smith
Balch & Bingham
P.O. Box 78
2 Dexter Avenue
Montgomery, Alabama 36101-0078


of Counsel